

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies. /

Docket No. 000121-TP  
Filed: August 25, 2000

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TIME WARNER TELECOM OF FLORIDA L.P.'S  
INITIAL COMMENTS

Time Warner Telecom of Florida, L.P. ("TWTC") appreciates the opportunity to provide comments in response to Commission Staff's specific questions. In addition, TWTC offers general observations regarding adoption of a performance remedy plan for ILECs, as well as responses to presentations made by the parties during the workshop held on August 8, 2000.

STAFF QUESTIONS AND RESPONSES

QUESTION 1:

Does the Commission have the authority to establish, in advance, a generic enforcement mechanism provision which would be inserted in interconnection agreements in the event negotiations on this provision fail?

TWTC RESPONSE: TWTC concurs in the comments submitted by AT&T and MCI WorldCom, and agrees that the commission has authority to establish an enforcement mechanism in a generic docket utilizing administrative procedures

similar to those applied in Docket 981834-TP.

- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMP 3 \_\_\_\_\_
- COM \_\_\_\_\_
- CTR \_\_\_\_\_
- ECR I \_\_\_\_\_
- LEG I \_\_\_\_\_
- OPC \_\_\_\_\_
- PAI \_\_\_\_\_
- RCO Harvey \_\_\_\_\_
- SEC I \_\_\_\_\_
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**QUESTION 2:**

**Does the adoption of an enforcement mechanism provision by the Commission constitute the awarding of damages?**

**TWTC RESPONSE:** Again, TWTC concurs in the comments submitted by AT&T and MCI WorldCom and agrees that the Commission may adopt a generic enforcement mechanism regardless of the terminology applied. As Judge Hinkle recognized in MCI Telecommunications Corporation, et al. v. BellSouth Telecommunications, Inc., et al., Case No. 4:97cv141-RH, "a compensation provision could...be self executing or, to the extent necessary, enforceable in court." Thus, establishment of an enforcement mechanism in a generic docket, would not constitute the "awarding of damages."

**QUESTION 3:**

**What should be the objective of an enforcement mechanism?**

**TWTC RESPONSE:** The parties in this proceeding are in general agreement that the primary objective of an enforcement mechanism is to ensure that parity performance is consistently provided by the ILECs. Further, TWTC fully supports the observations made by Worldcom during the workshop that speak to the harm caused to an ALEC end-user customer and the irreversible damage to an ALEC's business reputation when an ILEC does not meet established performance standards.

**QUESTION 4:**

**For Purposes of evaluating ILEC performance in the context of an interconnection agreement, how should any Commission established enforcement mechanism be structured conceptually?**

**a. Frequency of monitoring?**

**TWTC RESPONSE:** TWTC agrees with other parties in this proceeding that monitoring should be conducted on a monthly basis.

**b. Time frame to be evaluated?**

**TWTC RESPONSE:** ILECs should report each month on the previous month's performance data.

**c. Level of disaggregation across metrics and offerings?**

**TWTC RESPONSE:** It is absolutely essential that the ILECs report monthly results with a sufficient level of disaggregation to ensure true performance is completely unmasked. TWTC supports the approach presented by AT&T whereby the appropriate level of disaggregation provides for a "like-to-like" comparison between the service(s) provided to the ALECs, and the service(s) an ILEC provides to itself. The recommended levels of disaggregation in the AT&T proposed plan, e.g., geography, sub-measures, product type, will also minimize opportunities for an ILEC to provide disparate treatment to an ALEC because all reported results will be "unmasked." For example, on one hand it is reasonable for an ILEC to report certain metrics such as telephone answer timeliness on a

statewide basis when a centralized call-processing center is used. On the other hand, it is not appropriate for an ILEC to report metrics such as call-blocking on interconnection trunks at the state level. Permitting an ILEC to do so for metrics like call-blocking will make it very difficult, if not impossible, for the Commission and ALECs to determine non-compliant performance due to the fact that the ILEC reported result is likely to be skewed because the call-blocking data would be aggregated across each of the end offices and/or tandem offices throughout the state. Therefore, it is extremely likely that non-compliant performance would be masked due to aggregation of critical data. Further illustrating the need for end office and/or tandem disaggregation of call-blocking results is the manner by which ALECs provide their interconnection trunking forecasts to the ILECs. In the case of TWTC, such interconnect trunking forecasts are provided at the end office and/or tandem office for each of the markets where TWTC operates. In this regard, AT&T's proposed plan provides the necessary levels of disaggregation.

**d. How should items a, b, and c above be balanced to provide statistical significance for metrics with a small number of observations per reporting period?**

**TWTC RESPONSE:** TWTC objects to Verizon's assertion that data sample sizes which are less than ten should be excluded from its monthly performance calculations. If Verizon's proposal to exclude small data sample sizes below ten

were to be adopted, there would be no way for either the Commission staff, nor the ALEC, to determine whether Verizon is providing disparate treatment to a new entrant given the likelihood that an insufficient business activity may be transacted due to the market entry status of the new entrant. The potential is high for a ripple effect on impacted new entrants, and the Commission, should Verizon be permitted to exclude small data sample sizes since to do so puts the burden of proof squarely on the ALEC to prove disparate treatment by an ILEC. Proving disparate treatment by an ILEC each time an ALEC suspects such treatment creates an environment whereby the ALEC has no other recourse than to seek remedies under their existing interconnection agreement or seek Commission intervention to resolve the matter.

**e. Automatic penalties for non-compliance?**

**TWTC RESPONSE:** TWTC agrees with other parties that penalties for non-compliance should be automatic.

**QUESTION 5:**

**For purposes of evaluating ILEC performance in the aggregate, how should the Commission's enforcement mechanism be structured conceptually?**

**TWTC RESPONSE:** Same response as for question 4 above (all-inclusive).

- a. Frequency of monitoring?
- b. Time frame to be evaluated?

- c. Level of disaggregation across metrics and offerings?
- d. How should a, b, and c above be balanced to provide statistical significance for metrics with a small number of observations per reporting period?
- e. Automatic vs. case-by-case fines for non-compliance?

**QUESTION 6:**

**How should the dollar value of penalties be determined?**

**TWTC RESPONSE:** TWTC supports the methodology employed in AT&T's proposed plan which provides for payment of remedies at the sub-measure level, payment of remedies based on the severity of the "miss," and utilization of statistical testing for metrics where parity is the standard to balance the risk of type 1 and type 2 errors.

**QUESTION 7:**

**Should there be a cap on penalty amounts and if so, how should that cap be determined?**

**TWTC RESPONSE:** TWTC respectfully objects to the use of absolute caps. However, TWTC is amenable to procedural caps that are "scalable" based on an ILECs' net income provided that all remedy amounts above the procedural cap will be paid into an escrow account as suggested by AT&T, and final disposition of escrow amounts are decided by the Commission.

**QUESTION 8:**

**How and when should consequences be escalated?**

**TWTC RESPONSE:** TWTC objects to the BellSouth approach that remedy plan consequences should be proportional to ALEC activity levels. This approach may unfairly penalize smaller ALECs that have lower business activity levels, but have increased exposure to competitive harm when ILEC poor or non-compliant performance is determined to be the cause. Instead, TWTC supports the two tiered remedy plan that factors in the level of local market competition as outlined in AT&T's proposed plan. This approach provides for a satisfactory escalation of consequences regardless of ALEC activity level.

**QUESTION 9:**

**How should extraordinary events be handled?**

**TWTC RESPONSE:** TWTC supports the position that extraordinary events would not be subject to remedy payments. Like Verizon, TWTC prefers a list of "excusable" events with the caveat that the parties must develop an agreed upon mechanism to capture the specific start and stop times for an excusable event before such an event would be excluded from a potential remedy payment. In this regard, a root cause analysis may be an appropriate tool to evaluate excludable events in order to minimize the ILECs' exposure to unfair remedy payments. However, the Commission would ultimately have to decide

which events may be excludable events if the parties are unable to reach agreement through root cause analysis.

### **GENERAL OBSERVATIONS**

First, any performance remedy plan adopted by the Commission must be easy to understand and administer so that Commission staff and smaller ALECs can evaluate various statistical methodologies for determining ILEC parity performance without resort to outside resources such as statisticians or economists. Initially, however, TWTC agrees conceptually with AT&T's Performance Incentive Plan (PIP) Version 2.0, as presented during the workshop, with the caveat noted by Commission staff that each of the parties must clearly understand how the mathematical coefficients footnoted in AT&T's proposed plan are derived. TWTC agrees that it would also be appropriate for AT&T to present illustrative calculations using sample data that bears out the statistical determination of ILEC parity.

Secondly, TWTC concurs with ALLTEL that a remedy plan must provide a mechanism for determining when an ILEC has excluded certain data during the calculation of monthly performance. TWTC considers this a critical factor in any remedy plan approved by the Commission. Even though the ILECs have made interim OSS interfaces available to ALECs, i.e., GUI interfaces, the matter of the ILECs' exclusion of certain performance data is not addressed, nor is it resolved.



Additionally, TWTC's concern regarding the ILECs' exclusion of certain data from the monthly performance calculation is heightened with respect to statements made by Verizon during its presentation indicating that data samples less than ten will not be included for determining parity or compliance with benchmarks.

Third, regardless of which remedy plan the Commission ultimately adopts, at a minimum the outcome of that remedy plan should achieve the following three objectives:

- 1) The plan should be scalable with regard to the size of the ILEC net revenues;
- 2) The plan should include remedies at the sub-measure level; and
- 3) The remedy amount must be significant enough to correct ILEC poor performance and prevent backsliding. The remedy plan must also account for the degree of the severity of "miss," as well as the frequency of non-compliant performance.

Although TWTC agrees that use of statistical analysis is an appropriate tool for determining parity performance, TWTC does not support use of statistical tests for metrics that have benchmark standards. To apply statistical tests for metrics that have benchmarks defeats the initial purpose of the benchmark, i.e., to make a reasonable determination of ILEC performance in the absence of a comparable retail analog with built in allowance for less than "perfect"

performance, and merely provides the ILECs with an additional level of "forgiveness." While TWTC is not necessarily in favor of providing additional ILEC forgiveness on benchmarks, we fully appreciate and recognize the problems presented by small data sample sizes. In this regard, TWTC prefers the benchmark adjustment table outlined in AT&T's remedy proposal, rather than use of statistical analysis for metrics where a benchmark is the standard. AT&T's proposed methodology allows for ILEC forgiveness, but more importantly, the proposed methodology is simple to understand, and the benchmark adjustment table is scalable to handle all data sample sizes.

TWTC also has specific areas of disagreement or concern with certain statements made by the ILECs during the workshop. For instance, Verizon indicated that the development of benchmarks should be predicated on historical data, which is a fundamental concept that TWTC supports. However, TWTC believes that use of historical data for the development of benchmarks could, in fact, be a "double edged sword." The question is whether an ILEC will raise an existing benchmark when historical data demonstrates consistently better performance, and vice versa for ALECs with respect to consistently lower performance by the ILEC. In short, there must be a compromise by all parties to raise or lower the performance "bar" if historical data is used in the further development of benchmarks.

TWTC is also concerned with Verizon's proposal to subject the remedy plan to a trial implementation period. TWTC objects to a trial implementation period for two reasons. First, Verizon has stated on numerous occasions in other performance measurement related proceedings that its processes are nationally focused. As a result, Verizon is able to capture data and report on each of the metrics contained in the California JPSA across its operating footprint. Secondly, because Verizon's processes are national in scope, it is TWTC's opinion that Verizon has had ample time to develop the metrics, test the corresponding business rules and formulas, and provide self-reporting for each of the metrics contained in the JPSA. Similar rationale should also be applicable and appropriate for BellSouth and Sprint. BellSouth and Sprint have generally made available the terms specified in either the Service Quality Measurements (SQM's) plan (BellSouth) or the California JPSA (Sprint). In view of the aforementioned observations concerning the ability of the ILECs to report the metrics from each of their respective performance measurement plans, there does not appear to be a compelling business reason for implementing a remedy plan on a trial basis.

One final area of concern surrounds a statement made by BellSouth during the workshop regarding the need for reciprocity of the performance metrics by the ALECs. Clearly, ALEC performance is not the issue in this

proceeding. Rather, the issue is to determine what an appropriate remedy plan should be for each of the ILECs. BellSouth's remarks are ill-timed and inappropriate given the low level of market competition, as illustrated by AT&T during its presentation. Requiring ALECs to reciprocally measure performance at this early development stage of market competition will serve only to inhibit growth in competition. Therefore, TWTC respectfully suggests that consideration of any requirement for ALEC reciprocity for producing or reporting performance metrics be postponed until market competition parity is achieved.

Respectfully submitted this 25<sup>th</sup> day of August, 2000.



**PETER M. DUNBAR, ESQ.**

Fla. Bar No. 146594

**KAREN M. CAMECHIS, ESQ.**

Fla. Bar No. 0898104

Pennington, Moore, Wilkinson,  
Bell & Dunbar, P.A.

Post Office Box 10095

Tallahassee, Florida 32302-2095

(850) 222-3533

(850) 222-2126 (fax)

Counsel for: Time Warner Telecom  
of Florida, L.P.

**CERTIFICATE OF SERVICE**  
**DOCKET NO. 000121-TP**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing **Time Warner Telecom of Florida, L.P.'s Initial Comments** has been served by U.S. Mail on this 25<sup>th</sup> day of August, 2000, to the following parties of record:

ALLTEL Communications, Inc.  
c/o Ausley Law Firm  
Jeffrey Wahlen  
P.O. Box 391  
Tallahassee, FL 32302

AT&T  
Marsha Rule  
101 North Monroe Street, Suite 700  
Tallahassee, FL 32301-1549

BellSouth Telecommunications, Inc.  
Ms. Nancy B. White  
c/o Nancy H. Sims  
150 South Monroe Street, Suite 400  
Tallahassee, FL 32301-1556

Covad Communications Company  
Catherine F. Boone, Esq.  
Regional Counsel  
10 Glenlake Parkway, Suite 650  
Atlanta, GA 30328-3495

Florida Cable Telecommunications  
Assoc., Inc.  
Michael A. Gross  
310 N. Monroe St.  
Tallahassee, FL 32301

Fl. Public Telecommunications Assoc.  
Angela Green, General Counsel  
125 S. Gadsden St., #200  
Tallahassee, FL 32301-1525

Intermedia Communications, Inc.  
Mr. Scott Sapperstein  
3625 Queen Palm Drive  
Tampa, FL 33619-1309

ITC^Deltacom  
Nanette Edwards/Brian Musselwhite  
4092 South Memorial Parkway  
Huntsville, AL 35802

MCI WorldCom  
Ms. Donna C. McNulty  
325 John Knox Road  
The Atrium, Suite 105  
Tallahassee, FL 32303-4131

MediaOne Florida Telecommunications,  
Inc.  
c/o Laura L. Gallagher, P.A.  
101 E. College Ave., Suite 302  
Tallahassee, FL 32301

Messer Law Firm  
Floyd Self  
P.O. Box 1876  
Tallahassee, FL 32302

Rutledge Law Firm  
Kenneth Hoffman/John Ellis  
P.O. Box 551  
Tallahassee, FL 32302-0551

SBC Telecom, Inc.  
Carol Paulsen  
5800 Northwest Parkway  
Suite 125, 1-Q-01  
San Antonio, TX 78249

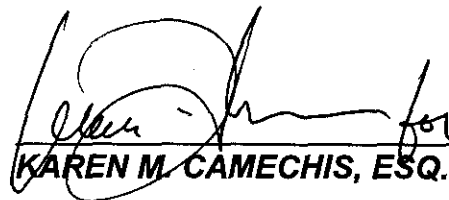
Sprint Communications Company Limited  
Partnership  
Susan Masterton/Charles Rehwinkel  
P.O. Box 2214  
MC: FLTLHO0107  
Tallahassee, FL 32316-2214

Supra Telecom  
Wayne Stavanja/Mark Buechele  
1311 Executive Center Drive, Suite 200  
Tallahassee, FL 32301

Time Warner Telecom of Florida, L.P.  
Carolyn Marek  
233 Bramerton Court  
Franklin, TN 37069

Verizon Select Services Inc.  
Kimberly Caswell  
P.O. Box 110, FLTC0007  
Tampa, FL 33601-0110

Wiggins Law Firm  
Patrick Wiggins/Charles J. Pellegrini  
P.O. Drawer 1657  
Tallahassee, FL 32302

  
KAREN M. CAMECHIS, ESQ.